IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12375 of 2007
To
SPECIAL CIVIL APPLICATION No. 12376 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVRAJBHAI ZAVERBHAI PATEL ALIAS JIVABHAI DECEASED & 1 - Petitioner(s)
Versus
THE DEPUTY COLLECTOR & 1 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 2.
MS KIRAN PANDEY A.G.P. for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/05/2007

ORAL COMMON JUDGMENT

1. **RULE**. Ms. Kiran Pandey learned A.G.P., waives service of rule on behalf of the respondents. At the

request of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

2. In this petition the petitioner has challenged the order dated 30th December, 2004 calling upon the petitioner to pay deficit stamp duty together with penalty. The said order is in printed form. According to the petitioner, it is passed without application of mind. It is further contended by the petitioner that the petitioner has deposited 25% of the deficit stamp duty with a view to prefer appeal, but the same has been rejected on the ground of delay. The said order is dated 29th March, 2007.

3. In these petitions, the issues which are agitated before this Court are similar to the issues which are agitated in Special Civil Application No. 26679/2006 and allied matters. Special Civil Application No. 26679/2006 and its allied matters were disposed of by the learned Single Judge of this Court by order dated 27th December, 2006. For the reasons recorded in the said order the matters were remanded to the concerned authority by giving direction in paragraph 6 thereof. In paragraph 6 of the said judgment the learned Single Judge

has observed as under :-

> “6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the impugned orders/Notices are violative of Article 14 of the Constitution of India as they are non-speaking orders and arbitrary in nature and, therefore, all the impugned orders/Notices passed by the Deputy Collector/ Collector, Stamp Duty Valuation Organization are hereby quashed and set aside. All the matters are remanded to the concerned Deputy Collector, Stamp Duty Valuation Organization / Collector of Stamps for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984 and after giving an opportunity of being heard to the petitioners.
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> In certain matters, it is observed that the petitioners have no option but to approach the appellate authority. They approached appellate authority but the delay has not been condoned. Requisite amount has not been paid or has been paid partly, in preferring the Appeal. Such order of non-condonation of delay are also hereby quashed and set aside. The amount deposited by the petitioners, while preferring appeal, shall be refunded to the petitioners, by the respondent authorities upon proper application and upon proper verification of proof of the deposit of the amount. The parties will be at liberty to make their submissions before the concerned Deputy Collector, Stamp Duty Valuation Organization / Collector of Stamps, which may be dealt with by them while passing the orders in accordance with law. In each of the aforesaid matters, Rule made absolute to the aforesaid extent with no order as to costs.“

3.1. By the said decision, the matters are remanded to the concerned authority for reconsideration. In view of the same, in the present case also, the impugned orders are required to be quashed and set aside and they

are hereby quashed and set aside. The matter is remanded to the concerned authority for adjudication in accordance with the directions of paragraph 6 quoted above.

4. Rule is made absolute to the aforesaid extent with no order as to costs.

[Akshay H. Mehta, J.]

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